

# **JOURNAL OF THE SENATE**

## **EIGHTY-EIGHTH SESSION**

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NINETEENTH DAY

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STATE OF SOUTH DAKOTA  
Senate Chamber, Pierre  
Wednesday, February 6, 2013

The Senate convened at 2:00 p.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Pastor Wes LaBrier, followed by the Pledge of Allegiance led by Senate page Logan Welker.

Roll Call: All members present.

### **APPROVAL OF THE JOURNAL**

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the eighteenth day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,  
Corey Brown, Chair

Which motion prevailed.

## REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that SB 38, 58, and 70 were delivered to his Excellency, the Governor, for his approval at 8:25 a.m., February 6, 2013.

Respectfully submitted,  
Corey Brown, Chair

Also MR. PRESIDENT:

The Committee on Local Government respectfully reports that it has had under consideration SB 169 and returns the same with the recommendation that said bill do pass.

Also MR. PRESIDENT:

The Committee on Local Government respectfully reports that it has had under consideration SB 129 which was deferred to the 41<sup>st</sup> Legislative Day.

Respectfully submitted,  
Mark Kirkeby, Chair

Also MR. PRESIDENT:

The Committee on Transportation respectfully reports that it has had under consideration SB 151 and returns the same with the recommendation that said bill be amended as follows:

151fd

On page 4, after line 1 of the printed bill, insert:

"Section 8. Nothing in chapters 31-13 and 31-18 precludes any rural electric, telecommunications company, or entity created by chapter 34A-5, 46A-3A, or 46A-9 or any nonprofit engaged in the treatment, distribution, and sale of water to rural consumers from constructing, maintaining, or operating any facility along, upon, or under publicly owned land including any road, highway, right-of-way, street, alley, bridge, or causeway."

151fb

On page 1, line 5, of the printed bill, remove the overstrikes from "highway".

On page 1, line 6, remove the overstrikes from "highway".

1 On page 1, line 10, remove the overstrikes from "~~highway~~".

2 On page 2, line 7, remove the overstrikes from "~~highway~~".

3 On page 2, line 8, remove the overstrikes from "~~highway~~".

4 On page 2, line 14, remove the overstrikes from "~~highway~~".

5 On page 2, line 21, remove the overstrikes from "~~highway~~".

6 On page 2, line 22, after "~~highways~~" insert "highway".

7 On page 2, line 23, after "~~highways~~" insert "highway".

8 And that as so amended said bill do pass.

9 Also MR. PRESIDENT:

10 The Committee on Transportation respectfully reports that it has had under consideration  
11 SB 212 which was deferred to the 41<sup>st</sup> Legislative Day.

12 Respectfully submitted,  
13 Mike Vehle, Chair

14 Also MR. PRESIDENT:

15 The Committee on Health and Human Services respectfully reports that it has had under  
16 consideration SB 215 and HB 1011 and returns the same with the recommendation that said  
17 bills do pass.

18 Also MR. PRESIDENT:

19 The Committee on Health and Human Services respectfully reports that it has had under  
20 consideration HB 1047 and returns the same with the recommendation that said bill do pass and  
21 be placed on the consent calendar.

22 Also MR. PRESIDENT:

23 The Committee on Health and Human Services respectfully reports that it has had under  
24 consideration SB 160 which was deferred to the 41<sup>st</sup> Legislative Day.

25 Respectfully submitted,  
26 Jean M. Hunhoff, Chair

1 Also MR. PRESIDENT:

2 The Committee on State Affairs respectfully reports that it has had under consideration  
3 SJR 1 and SB 166 and 207 and returns the same with the recommendation that said bills and  
4 resolution do pass.

5 Also MR. PRESIDENT:

6 The Committee on State Affairs respectfully reports that it has had under consideration  
7 SB 198 and returns the same with the recommendation that said bill be amended as follows:

8 198sa

9 On page 1 of the printed bill, delete lines 8 to 15, inclusive, and insert:

10 "

11 (2) Three members of the bar practicing law in this state, no more than two of whom may  
12 be of the same political party, appointed by ~~the president~~ a majority vote of the state  
13 bar commissioners; and

14 (3) Two citizens who are not ~~judges, retired judges or members of the state bar, and not~~  
15 of the same political party, appointed by the Governor; and

16 (4) Two members, one of whom shall be appointed by the president pro tempore of the  
17 Senate, and one of whom shall be appointed by the speaker of the".

18 On page 2, line 2, delete "members of" and insert "appointed by".

19 198oa

20 On page 1, line 6, of the printed bill, overstrike "seven" and insert "nine".

21 And that as so amended said bill do pass.

22 Also MR. PRESIDENT:

23 The Committee on State Affairs respectfully reports that it has had under consideration the  
24 nomination of D. J. Mertens of Lyman County, Kennebec, South Dakota, to the South Dakota  
25 Building Authority and returns the same with the recommendation that the Senate advise and  
26 consent to the confirmation of said reappointment and place on consent calendar.

1 Also MR. PRESIDENT:

2 The Committee on State Affairs respectfully reports that it has had under consideration the  
3 nomination of Craig D. Johnson of Pennington County, Rapid City, South Dakota, to the  
4 position of Assistant Adjutant General, Army, and returns the same with the recommendation  
5 that the Senate advise and consent to the confirmation of said appointment and place on consent  
6 calendar.

7 Also MR. PRESIDENT:

8 The Committee on State Affairs respectfully reports that it has had under consideration  
9 SJR 3 and 4 which were deferred to the 41<sup>st</sup> Legislative Day.

10 Respectfully submitted,  
11 Larry Rhoden, Chair

12 **MESSAGE FROM THE HOUSE**

13 MR. PRESIDENT:

14 I have the honor to transmit herewith HB 1101, 1124, 1126, 1153, 1164, 1174, and 1208  
15 which have passed the House and your favorable consideration is respectfully requested.

16 Respectfully,  
17 Arlene Kvislen, Chief Clerk

18 **MOTIONS AND RESOLUTIONS**

19 Sen. Olson moved that SB 224 be placed to follow SB 152 on today's calendar.

20 Which motion prevailed.

21 Sen. Olson moved that SB 125 and 185 be deferred to Thursday, February 7, the 20<sup>th</sup>  
22 legislative day.

23 Which motion prevailed.

24 Sen. Olson moved that SB 159 be deferred to Tuesday, February 12, the 22<sup>nd</sup> legislative  
25 day.

26 Which motion prevailed.

1 Sen. Olson moved that when we adjourn today, we adjourn to convene at 1:00 p.m. on  
2 Thursday, February 7, the 20<sup>th</sup> legislative day.

3 Which motion prevailed.

4 **CONSIDERATION OF REPORTS OF COMMITTEES**

5 Sen. Olson moved that the reports of the Standing Committees on

6 Education on SB 233 as found on page 321 of the Senate Journal; also

7 Agriculture and Natural Resources on SB 205 as found on page 322 of the Senate Journal;  
8 also

9 Judiciary on SB 218 as found on page 323 of the Senate Journal be adopted.

10 Which motion prevailed.

11 **FIRST READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

12 HB 1101: FOR AN ACT ENTITLED, An Act to revise certain provisions relating to public  
13 employee grievance procedures.

14 Was read the first time and referred to the Committee on Local Government.

15 HB 1124: FOR AN ACT ENTITLED, An Act to provide for the appointment of members  
16 of the South Dakota Pulse Crops Council.

17 Was read the first time and referred to the Committee on Agriculture and Natural  
18 Resources.

19 HB 1126: FOR AN ACT ENTITLED, An Act to revise the massage therapy licensing  
20 requirements.

21 Was read the first time and referred to the Committee on Health and Human Services.

22 HB 1153: FOR AN ACT ENTITLED, An Act to exempt certain environmental upgrade  
23 values from assessment during construction and to provide a sunset clause for the environmental  
24 upgrade exemption.

1 Was read the first time and referred to the Committee on Taxation.

2 HB 1164: FOR AN ACT ENTITLED, An Act to establish a classroom innovation grant  
3 program and to make an appropriation therefor.

4 Was read the first time and referred to the Committee on Education.

5 HB 1174: FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to  
6 snowmobile operation.

7 Was read the first time and referred to the Committee on Transportation.

8 HB 1208: FOR AN ACT ENTITLED, An Act to prohibit the unlawful release of medical  
9 waste and to provide a penalty therfor.

10 Was read the first time and referred to the Committee on Health and Human Services.

11 **SECOND READING OF CONSENT CALENDAR ITEMS**

12 SB 121: FOR AN ACT ENTITLED, An Act to repeal certain provisions relating to the  
13 Commission on Intergovernmental Cooperation.

14 Was read the second time.

15 The question being "Shall SB 121 pass as amended?"

16 And the roll being called:

17 Yeas 35, Nays 0, Excused 0, Absent 0

18 Yeas:

19 Adelstein; Begalka; Bradford; Brown; Buhl; Ewing; Frerichs; Heineman (Phyllis); Holien;  
20 Hunhoff (Jean); Jensen; Johnston; Jones; Kirkeby; Krebs; Lederman; Lucas; Maher; Monroe;  
21 Novstrup (Al); Olson (Russell); Omdahl; Otten (Ernie); Peters; Rampelberg; Rave; Rhoden;  
22 Soholt; Sutton; Tidemann; Tieszen; Van Gerpen; Vehle; Welke; White

23 So the bill having received an affirmative vote of a majority of the members-elect, the  
24 President declared the bill passed and the title was agreed to.

25 SB 227: FOR AN ACT ENTITLED, An Act to revise provisions relating to the possession  
26 of firearms on snowmobiles.

27 Was read the second time.

1 The question being "Shall SB 227 pass?"

2 And the roll being called:

3 Yeas 35, Nays 0, Excused 0, Absent 0

4 Yeas:

5 Adelstein; Begalka; Bradford; Brown; Buhl; Ewing; Frerichs; Heineman (Phyllis); Holien;  
6 Hunhoff (Jean); Jensen; Johnston; Jones; Kirkeby; Krebs; Lederman; Lucas; Maher; Monroe;  
7 Novstrup (Al); Olson (Russell); Omdahl; Otten (Ernie); Peters; Rampelberg; Rave; Rhoden;  
8 Soholt; Sutton; Tidemann; Tieszen; Van Gerpen; Vehle; Welke; White

9 So the bill having received an affirmative vote of a majority of the members-elect, the  
10 President declared the bill passed and the title was agreed to.

11 **SECOND READING OF SENATE BILLS AND JOINT RESOLUTIONS**

12 SB 105: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding  
13 instruction permits and restricted minor's permits to drive a motor vehicle.

14 Was read the second time.

15 The question being "Shall SB 105 pass?"

16 And the roll being called:

17 Yeas 21, Nays 14, Excused 0, Absent 0

18 Yeas:

19 Adelstein; Buhl; Ewing; Heineman (Phyllis); Hunhoff (Jean); Johnston; Jones; Kirkeby; Krebs;  
20 Lederman; Lucas; Novstrup (Al); Omdahl; Otten (Ernie); Rampelberg; Soholt; Tidemann;  
21 Tieszen; Vehle; Welke; White

22 Nays:

23 Begalka; Bradford; Brown; Frerichs; Holien; Jensen; Maher; Monroe; Olson (Russell); Peters;  
24 Rave; Rhoden; Sutton; Van Gerpen

25 So the bill having received an affirmative vote of a majority of the members-elect, the  
26 President declared the bill passed and the title was agreed to.

27 SB 106: FOR AN ACT ENTITLED, An Act to prohibit certain minors from using wireless  
28 communication devices while operating motor vehicles upon the public highways.

29 Was read the second time.



1 The question being "Shall SB 106 pass?"

2 And the roll being called:

3 Yeas 26, Nays 9, Excused 0, Absent 0

4 Yeas:

5 Adelstein; Begalka; Buhl; Ewing; Frerichs; Heineman (Phyllis); Hunhoff (Jean); Johnston;  
6 Jones; Kirkeby; Krebs; Lederman; Lucas; Monroe; Novstrup (Al); Olson (Russell); Otten  
7 (Ernie); Rampelberg; Rave; Soholt; Sutton; Tidemann; Tieszen; Vehle; Welke; White

8 Nays:

9 Bradford; Brown; Holien; Jensen; Maher; Omdahl; Peters; Rhoden; Van Gerpen

10 So the bill having received an affirmative vote of a majority of the members-elect, the  
11 President declared the bill passed and the title was agreed to.

12 SB 107: FOR AN ACT ENTITLED, An Act to limit the number of passengers allowed in  
13 a motor vehicle operated by a holder of a restricted minor's permit.

14 Was read the second time.

15 The question being "Shall SB 107 pass?"

16 And the roll being called:

17 Yeas 18, Nays 17, Excused 0, Absent 0

18 Yeas:

19 Adelstein; Begalka; Buhl; Ewing; Heineman (Phyllis); Hunhoff (Jean); Johnston; Jones;  
20 Kirkeby; Krebs; Lederman; Omdahl; Otten (Ernie); Soholt; Tidemann; Tieszen; Vehle; White

21 Nays:

22 Bradford; Brown; Frerichs; Holien; Jensen; Lucas; Maher; Monroe; Novstrup (Al); Olson  
23 (Russell); Peters; Rampelberg; Rave; Rhoden; Sutton; Van Gerpen; Welke

24 So the bill having received an affirmative vote of a majority of the members-elect, the  
25 President declared the bill passed and the title was agreed to.

26 SB 216: FOR AN ACT ENTITLED, An Act to establish a state-wide driver education  
27 program.

28 Was read the second time.

1 The question being "Shall SB 216 pass as amended?"

2 And the roll being called:

3 Yeas 30, Nays 5, Excused 0, Absent 0

4 Yeas:

5 Adelstein; Begalka; Bradford; Brown; Buhl; Ewing; Frerichs; Heineman (Phyllis); Johnston;  
6 Jones; Kirkeby; Krebs; Lederman; Lucas; Monroe; Novstrup (Al); Olson (Russell); Omdahl;  
7 Otten (Ernie); Rampelberg; Rave; Rhoden; Soholt; Sutton; Tidemann; Tieszen; Van Gerpen;  
8 Vehle; Welke; White

9 Nays:

10 Holien; Hunhoff (Jean); Jensen; Maher; Peters

11 So the bill having received an affirmative vote of a majority of the members-elect, the  
12 President declared the bill passed and the title was agreed to.

13 SB 133: FOR AN ACT ENTITLED, An Act to establish a pharmacy audit integrity  
14 program.

15 Was read the second time.

16 The question being "Shall SB 133 pass as amended?"

17 And the roll being called:

18 Yeas 31, Nays 3, Excused 1, Absent 0

19 Yeas:

20 Adelstein; Begalka; Bradford; Brown; Buhl; Ewing; Frerichs; Heineman (Phyllis); Hunhoff  
21 (Jean); Johnston; Jones; Kirkeby; Krebs; Lederman; Lucas; Maher; Monroe; Olson (Russell);  
22 Otten (Ernie); Peters; Rampelberg; Rave; Rhoden; Soholt; Sutton; Tidemann; Tieszen; Van  
23 Gerpen; Vehle; Welke; White

24 Nays:

25 Jensen; Novstrup (Al); Omdahl

26 Excused:

27 Holien

28 So the bill having received an affirmative vote of a majority of the members-elect, the  
29 President declared the bill passed and the title was agreed to.

1 SB 209: FOR AN ACT ENTITLED, An Act to provide safety provisions by requiring  
2 registration of certain family day care facilities, to establish notification and reporting  
3 requirements for violations, and to provide penalties therefor.

4 Was read the second time.

5 Sen. Olson moved the previous question.

6 Which motion prevailed.

7 The question being "Shall SB 209 pass as amended?"

8 And the roll being called:

9 Yeas 13, Nays 21, Excused 1, Absent 0

10 Yeas:

11 Adelstein; Buhl; Heineman (Phyllis); Hunhoff (Jean); Johnston; Jones; Krebs; Lederman;  
12 Peters; Soholt; Tidemann; Tieszen; Vehle

13 Nays:

14 Begalka; Bradford; Brown; Ewing; Frerichs; Jensen; Kirkeby; Lucas; Maher; Monroe; Novstrup  
15 (Al); Olson (Russell); Omdahl; Otten (Ernie); Rampelberg; Rave; Rhoden; Sutton; Van Gerpen;  
16 Welke; White

17 Excused:

18 Holien

19 So the bill not having received an affirmative vote of a majority of the members-elect, the  
20 President declared the bill lost.

21 SB 74: FOR AN ACT ENTITLED, An Act to require the forfeiture of preference points  
22 for certain hunting licenses upon conviction of unlawfully killing, destroying, taking, or  
23 possessing trophy animals.

24 Was read the second time.

25 The question being "Shall SB 74 pass?"

26 And the roll being called:

27 Yeas 34, Nays 0, Excused 1, Absent 0

1 Yeas:

2 Adelstein; Begalka; Bradford; Brown; Buhl; Ewing; Frerichs; Heineman (Phyllis); Hunhoff  
3 (Jean); Jensen; Johnston; Jones; Kirkeby; Krebs; Lederman; Lucas; Maher; Monroe; Novstrup  
4 (Al); Olson (Russell); Omdahl; Otten (Ernie); Peters; Rampelberg; Rave; Rhoden; Soholt;  
5 Sutton; Tidemann; Tieszen; Van Gerpen; Vehle; Welke; White

6 Excused:

7 Holien

8 So the bill having received an affirmative vote of a majority of the members-elect, the  
9 President declared the bill passed and the title was agreed to.

10 SB 152: FOR AN ACT ENTITLED, An Act to authorize the hunting of coyotes using  
11 artificial light under certain conditions.

12 Was read the second time.

13 The question being "Shall SB 152 pass?"

14 And the roll being called:

15 Yeas 13, Nays 22, Excused 0, Absent 0

16 Yeas:

17 Buhl; Frerichs; Krebs; Lederman; Lucas; Maher; Monroe; Olson (Russell); Rampelberg; Rave;  
18 Rhoden; Sutton; Welke

19 Nays:

20 Adelstein; Begalka; Bradford; Brown; Ewing; Heineman (Phyllis); Holien; Hunhoff (Jean);  
21 Jensen; Johnston; Jones; Kirkeby; Novstrup (Al); Omdahl; Otten (Ernie); Peters; Soholt;  
22 Tidemann; Tieszen; Van Gerpen; Vehle; White

23 So the bill not having received an affirmative vote of a two-thirds majority of the members-  
24 elect, the President declared the bill lost.

25 SB 224: FOR AN ACT ENTITLED, An Act to revise and repeal certain aviation statutes  
26 and to increase certain related fees.

27 Was read the second time.

28 224ja

29 Sen. Rave moved that SB 224 be amended as follows:

1 On page 34 of the printed bill, delete lines 9 to 19, inclusive, and insert:

2	"Weight in Pounds	Rate
3	0 – 1,500	\$ 25
4	1,501 – 2,000	40
5	2,001 – 3,000	55
6	3,001 – 4,000	70
7	4,001 – 5,000	85
8	5,001 – 6,000	100
9	6,001 – 10,000	125
10	10,001 – 12,499	150
11	12,500 – 15,000	200
12	15,001 and over	300".

13 On page 34, delete lines 22 to 25, inclusive.

14 On page 43, line 5, delete "~~one~~ two" and insert "one".

15 On page 43, line 24, delete "~~two~~ four" and insert "two".

16 On page 44, line 3, delete "~~five~~ ten" and insert "five".

17 On page 44, line 4, delete "~~one~~ two" and insert "one".

18 Which motion prevailed.

19 Sen. Adelstein moved that SB 224 be deferred to Thursday, February 7, the 20<sup>th</sup> legislative  
20 day.

21 Which motion prevailed.

22 Sen. Olson moved that SB 132, 153, SJR 2, HB 1019, 1020, and 1091 be deferred to  
23 Thursday, February 7, the 20<sup>th</sup> legislative day.

24 Which motion prevailed.

**SIGNING OF BILLS**

The President publicly read the title to

HB 1012: FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the students eligible for resident tuition benefits at universities controlled by the Board of Regents.

HB 1051: FOR AN ACT ENTITLED, An Act to revise certain provisions related to the director's orders to hazardous insurers.

HB 1054: FOR AN ACT ENTITLED, An Act to repeal certain rule-making authority for the director of insurance.

HB 1064: FOR AN ACT ENTITLED, An Act to provide for certain methods of disbursement for school district flexible spending accounts.

And signed the same in the presence of the Senate.

**COMMEMORATIONS**

SC 6 Introduced by: Senator Vehle and Representative Rozum

A LEGISLATIVE COMMEMORATION, Honoring Doug Kirkus of Mitchell as the 2012 winner of the South Dakota Municipal League Excellence in Municipal Government Award.

WHEREAS, Doug Kirkus is an outstanding leader in the field of public safety and is not only an asset to his profession, but also to all local public entities in the State of South Dakota; and

WHEREAS, Doug Kirkus is a strong advocate for safe and efficient government, providing an example of leadership, commitment, volunteerism, and giving back to one's community; and

WHEREAS, Doug Kirkus has expanded his service to all the cities and other local governments in South Dakota; and

WHEREAS, Doug Kirkus's calm professionalism lends aid to entities when they are working through hardships:

NOW, THEREFORE, BE IT COMMEMORATED, by the Eighty-Eighth Legislature of the State of South Dakota, that Doug Kirkus is recognized for his Excellence in Municipal Government Award.

1 SC 7 Introduced by: Senator Otten (Ernie) and Representatives Latterell and Otten  
2 (Herman)

3 A LEGISLATIVE COMMEMORATION, Honoring Mary McClung with the city of Harrisburg,  
4 South Dakota as Municipal Finance Officer of the Year.

5 WHEREAS, for more than ten years Mary McClung has been essential in helping the city  
6 of Harrisburg operate efficiently and honestly; and

7 WHEREAS, Mary McClung daily shows concern for her city, its citizens, and employees  
8 with dedication, professionalism, and patience; and

9 WHEREAS, Mary McClung has delivered helpful, knowledgeable assistance to citizens and  
10 elected officials; and

11 WHEREAS, Mary McClung was nominated for this award by the mayor and city council  
12 members who are grateful for her dedicated, able service; and

13 WHEREAS, Mary McClung is a friend and mentor to municipal finance officers throughout  
14 the state:

15 NOW, THEREFORE, BE IT COMMEMORATED, by the Eighty-Eighth Legislature of the  
16 State of South Dakota, that Mary McClung is honored as 2012 Municipal Finance Officer of the  
17 Year.

18 Sen. Monroe moved that the Senate do now adjourn, which motion prevailed and at  
19 4:20 p.m. the Senate adjourned.

20 Jeannette Schipper, Secretary